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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

FAMOUS BIRTHDAYS, LLC, a
California limited liability company,

Plaintiff

v.

PASSES, INC., a Delaware
corporation; and LUCY GUO, an
individual,

Defendants

Case No. 2:24-cv-08364-AS

**DECLARATION OF KEVIN
OSTROWSKI IN SUPPORT OF
MOTION FOR AN ORDER
ISSUING A PRELIMINARY
INJUNCTION**

[Filed Concurrently with Notice of
Motion and Memorandum of Points
and Authorities; Declarations of Evan
Britton and Christopher D. Beatty;
and [Proposed] Order]

Date: November 21, 2024

Time: 10:00 a.m.

Courtroom: 540

Assigned for All Purposes to
Magistrate Judge Alka Sagar:

Action Filed: September 27, 2024

Trial Date: None Set

**REDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED
UNDER SEAL**

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1 **DECLARATION OF KEVIN OSTROWSKI IN SUPPORT OF MOTION**
2 **FOR PRELIMINARY INJUNCTION**

3 I, Kevin Ostrowski, declare as follows:

4 1. I am Chief Technology Officer (“CTO”) of Plaintiff Famous
5 Birthdays LLC (“Famous Birthdays”). I have personal knowledge of the facts
6 set forth herein, and if called as a witness, I could and would competently testify
7 to all of said facts. I make this declaration in support of Plaintiff Famous
8 Birthdays’ Motion for an Order Issuing a Preliminary Injunction.

9 2. I have over fifteen years of experience as a software engineer. My
10 roles at various companies have included application engineer, software
11 engineer, systems administrator and developer, lead architect, director, and now
12 CTO.

13 3. I have been the CTO for Famous Birthdays since September 2015.
14 In this role, I oversee all aspects of Famous Birthdays’ technology, development,
15 security and scalability, including all aspects of its public-facing website,
16 Famous Birthdays, and all aspects of its client-facing website for paying clients,
17 “Famous Birthdays Pro.”

18 4. In my role as CTO, I rewrote the architecture for Famous Birthdays
19 Pro from the ground up and oversee it. I have also rewritten and oversee its
20 Application Programming Interface (“API”).

21 5. Famous Birthdays’ computer systems support its website, which is
22 used in all 50 states in the U.S., and internationally.

23 **Overview of Famous Birthdays and Famous Birthdays Pro**

24 6. Famous Birthdays’ core offering is its publicly accessible website,
25 which features bios of celebrities and influencers, written by Famous Birthdays
26 staff. The public website contains a robust Terms of Service, which emphasizes
27 that the bios are the intellectual property of Famous Birthdays.

28 7. Famous Birthdays features over 100,000 celebrities and influencers

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on its website, each with a short, independently written bio that provides key details about the profiled individual in an entertaining and snappy format.

8. Famous Birthdays also tracks the web traffic for each profiled celebrity and influencer, which provides information such as which celebrities and influencers are being searched for the most, which are trending, and which are cooling off.

9. This data is valuable to companies, including because companies can use the bios to find influencers relevant to their marketing needs.

10. To leverage this information, Famous Birthdays offers paying clients access to a subscription service known as Famous Birthdays Pro. This service allows these clients access to select portions of Famous Birthdays' data, as negotiated for and set forth in the terms of their contract.

Overview Of Limited API Access And Famous Birthdays Pro Login Credentials Provided To Famous Birthdays Pro Users

11. Famous Birthdays provides Famous Birthdays Pro customers two methods to access data provided for in their contractual agreement.

12. First, customers get access to the paywalled Famous Birthdays Pro website. Famous Birthdays Pro is a dashboard that allows the customer to perform searches for celebrities and influencers, and view their bios, as well as data on their relative web traffic, and historical "rank graphs" showing whether they are trending upwards in popularity, downwards, or static.

13. Each Famous Birthdays Pro customer is provided with a username and password to access the information behind the paywall. Where the customer is an organization, rather than an individual, Famous Birthdays provides separate login credentials for each individual at the organization that will use the platform.

14. Second, when it has been contractually agreed to (as was the case with Passes), a Famous Birthdays Pro customer is provided limited access to

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Famous Birthdays’ API, which is another means to access Famous Birthdays’ data.

15. In this circumstance, a customer is provided specifically curated “API calls,” which it can then use to ping Famous Birthdays’ API for data on celebrities and influencers, including their relative web traffic and historical “rank graphs,” as well as an API token that functions similarly to a login password.

16. The API and dashboard function similarly, and are both curated to technologically limit the accessible data to the same limits set forth in the customer’s contract with Famous Birthdays. Thus, if a contract limits a customer to a certain number of monthly searches of profiles of celebrities and influencers, both the dashboard and the API calls contain a technical limit that prevents the customer from exceeding their authorized search limit.

17. There are also Terms of Service on Famous Birthdays Pro that further advise customers of the limitations on their use of the platform. A true and correct copy of the Famous Birthdays Pro Terms of Service is attached hereto as Exhibit A.

Limited API Access And Famous Birthdays Pro Login Credentials Were Provided To Defendants

18. After Famous Birthdays and Passes entered into the Services Agreement between Famous Birthdays and Passes on or about March 29, 2024 (the “Services Agreement”), Famous Birthdays provided limited API access and Famous Birthdays Pro login details to Passes.

19. Three individuals at Passes, Guo and two others, were provided Famous Birthdays Pro login credentials.

20. Consistent with the limit set in the Services Agreement, Passes could only use its login credentials for Famous Birthdays Pro to access the dashboard and perform 2,500 monthly searches. The dashboard technologically

prevented Passes from running searches in excess of that amount.

21. The API documentation provided to Passes consisted of seven “API calls” for Passes to utilize to access the data they had contracted to access. A true and correct copy of the API documentation provided to Defendants is attached hereto as **Exhibit B**.

22. These seven API calls are limited in their functionality consistent with the contractual limitations in the Services Agreement. Thus, Defendants, who are contractually limited to 2,500 monthly lookups of historical rank graphs for celebrities and influencers, using the API calls assigned to them, can only perform 2,500 lookups a month. The API calls will not return results beyond 2,500 a month.

Defendants Abused Their Access To Famous Birthdays Pro To Find And Exploit Famous Birthdays’ Internal API Endpoints

23. For its own internal use, Famous Birthdays has separate internal API endpoints, as is common for most websites.

24. Famous Birthdays’ internal API endpoints include an API call that allows Famous Birthdays to perform unlimited look-ups of celebrities and influencers and associated ranking graphs (as compared to the API calls assigned to Passes with the limit of 2,500).

25. These separate internal API endpoints were not shared with Passes, or any Famous Birthdays Pro customers for that matter. They are for use by Famous Birthdays’ staff only.

26. To obtain one of these internal API endpoints, Passes accessed the Famous Birthdays Pro dashboard, using Guo’s login credentials. Once logged in, a person sophisticated in computer science pulled up Famous Birthdays’ source code, which can only be done by accessing Famous Birthdays’ backend code or reverse engineering its system.

27. This person then looked over the various internal API calls used to

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1 generate the webpage. This person located the API call for historical rank graph
2 data for a given celebrity or influencer. Because this internal API endpoint in
3 Famous Birthdays Pro's source code is not provided to customers, it has no
4 limitations on monthly look-ups. A true and correct copy of a screenshot
5 showing this internal API call amidst Famous Birthdays Pro's source code is
6 attached hereto as **Exhibit C**.

7 28. Next, Passes logged into Guo's Famous Birthdays Pro account,
8 creating a session within the Famous Birthdays Pro system on April 14, 2024.
9 Once logged in, Passes accessed the Famous Birthdays API by using the API
10 token Famous Birthdays had provided to it.

11 29. But, instead of using one of the API calls provided to Passes
12 pursuant to the contract, Passes instead used the historical rank graph API call
13 that it had surreptitiously extracted from the Famous Birthdays source code
14 while logged into the dashboard. I am familiar with and have reviewed the log
15 files associated with Passes' Famous Birthdays Pro account. A true and correct
16 copy of our Passes API access logs is attached hereto as **Exhibit D**.

17 30. Using this unauthorized API call, Passes, under Guo's account,
18 performed 106,124 lookups between April 14 and 20, 2024. A true and correct
19 copy of Famous Birthdays' internal dashboard reflecting the over 106,000
20 lookups by Guo is attached hereto as **Exhibit E**.

21 31. These lookups could not have been performed with the API
22 documentation provided to Defendants as part of the Services Agreement, as the
23 calls and endpoints provided therein are subject to technical, code-based
24 limitations that cap them at 2,500 monthly lookups, nor could they have been
25 performed through manual searches on Famous Birthdays Pro, which contain
26 the same limitations.

27 32. Moreover, Passes was able to scrape 106,124 of our most popular
28 bios one-by-one, including the URL names for each such bio, between April 14

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and 20, 2024. The URL list of our bios, and their relative ranking by traffic, are not provided as part of Famous Birthdays Pro, and were not provided in the API documentation given to Defendants in connection with the Services Agreement.


33. The only way Defendants could have accessed our URL list is by seeking to exploit our sitemap.

34. Moreover, our Passes API access logs show that Passes pinged our internal API for historical rank graph data 103,000 times between April 14 and 20, 2024, pingping our servers every 2 seconds to scrape a different bio.

35. No human could have manually pinged our servers every 2 seconds to retrieve a different celebrity's bio over 100,000 times over a six-day period. The access logs reflect that Passes used an automated script that pretended to be an authorized human Passes user of Famous Birthdays Pro with permission to use Passes' Famous Birthdays API token. That script then used our internal API endpoint, which was taken from our back-end source code, to perform searches in excess of the limited 2,500 allowed by the Services Agreement and Passes' Famous Birthdays Pro login credentials and limited API calls. Passes has then scraped over 100,000 of our bios using the same script.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 18th day of October, 2024, at Los Angeles, California.

Signed by:

A50CC478404947B...

Kevin Ostrowski

INDEX OF EXHIBITS

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EXHIBIT A

Acceptance of Terms

By accepting our terms of service or by accessing Famous Birthdays Pro, you acknowledge that you have read and agree to our terms.

General Terms

You may use Famous Birthdays Pro for lawful purposes. All rights and interest to the service remain with Famous Birthdays. You shall not sublicense, republish, or transfer any data obtained via Famous Birthdays Pro to any third party. The failure of Famous Birthdays to enforce any right of these terms shall not be a waiver of that right. Famous Birthdays does not warrant the accuracy of the data or it's suitability for any purpose. Famous Birthdays disclaims all warranties, expressed or implied, as to any matter and shall not be responsible for any loss or damage that may directly or indirectly arise as the result of the use of the data contained in Famous Birthdays Pro.

Limitation of Liability

You hereby release and waive all claims against Famous Birthdays, and its officers, agents, or other partners, and employees from any liability for claims, damages, and expenses arising from or in any way related to your use of the Famous Birthdays Pro.

Indemnification

You shall defend, indemnify, and hold harmless Famous Birthdays against any third-party claims, actions or demands, including without limitation reasonable legal fees, arising or resulting from your breach of these terms of service.

Intellectual Property

You acknowledge and agree that the copyright and any other intellectual property rights to any data and/or information obtained by using the services is and shall remain with Famous Birthdays. You acknowledge that such Famous Birthdays Data is proprietary to Famous Birthdays.

Privacy

To understand how Famous Birthdays collects and uses personal information, please visit our [privacy policy](#).

EXHIBIT A

**ENTIRE EXHIBIT REDACTED
LODGED CONDITIONALLY
UNDER SEAL**

Pages 11-36

EXHIBIT B

**ENTIRE EXHIBIT REDACTED
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Pages 37-38

EXHIBIT C

**ENTIRE EXHIBIT REDACTED
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Pages 39-2100

EXHIBIT D

EXHIBIT E

Passes Users

weekly scheduledbiweekly scheduledmonthly scheduled

HomeClientsUsersActivity

Show100entries

Search:

Username	Email	Last Login	Rising Star	Weekly Scheduled	Bi-Weekly Scheduled	Monthly Scheduled	Monthly Lookups	Monthly Reports
connor-sweeney	connor@passes.com	03/09/2024 05:39 PM	N	0	8	0	1	8
justin-burke-passes	justin@passes.com	--	N	0	8	0	0	0
lucy-guo	lucy@passes.com	06/21/2024 11:54 AM	N	7	7	3	106,124	15

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